IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 23RD AUGUST 2006 / 1ST BHADRA 1928

ST.Rev..No. 187 of 2003()

TA.1250/1999 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONERS:

M/S. TITAN INDUSTRIES,
C/O. D.C.JOHAR & SONS (P) LTD., D.NO.XI/6319,
JOHNSON BUILDINGS, CONVENT JUNCTION, MARKET ROAD,
ERNAKULAM, COCHIN-11, REPRESENTED BY ITS

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:

STATE OF KERALA.

BY SPL. G.P. SRI.V.V.ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 23/08/2006, ALONG WITH STRV NO. 188 OF 2003 STRV NO. 245 OF 2003 & STRV NO. 423 OF 2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. Nos.187, 188 & 245
of 2003 & 423 of 2005

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Dated this the 23rd day of August, 2006.

JUDGMENT

Ramachandran Nair, J.

The common question arising in the Sales Tax Revision Cases filed for the assessment years 1992-93, 1993-94 and 1994-95 is whether the Tribunal is justified in confirming forfeiture of excess collection of sales tax under Section 46A(1) of the KGST Act. In the T.R.C. filed for 1998-99 the question raised is whether in the determination of taxable turnover petitioner is entitled to deduction of tax at 10% as claimed by it or only 6% allowed by the Assessing Officer and confirmed in appeal by the Tribunal.

2. We have heard counsel for the petitioner and the Special Government Pleader for the respondent. The assessee is a reputed company engaged in manufacture and sale of electronic wrist watches. During the relevant years company adopted a policy of price equalisation of it's products for sale in various States. In other words, products were sold at same price all over the country irrespective of the rate of sales tax payable in the various States. So far as the sales in Kerala are concerned, the rate of tax on electronic wrist watches was reduced to 5% for 1992-93 and 1993-94 and for the year 1994-95 it was 6%. However, the assessee-company without noticing the reduction in rate of tax available on the product, split the price of the product and in the invoices showed

collection of sales tax at 8% for all the three years 1992-93 to 1994-95. In the course of assessment the Assessing Officer assessed the turnover at the rate applicable under the Notification for all three years. After adjusting the tax paid towards assessed tax, the balance was forfeited by the officer in exercise of powers conferred under Section 46A(1) of the KGST Act. The assessee challenged the assessments in two rounds of appeal on the ground that the collection of tax shown in the invoices were not real collection of tax and invoices showed only the split up of the equalised price charged to customers all over India. This reasoning of the assessee was rejected by the appellate authorities including the Tribunal. Against this order of the Tribunal confirming forfeiture of excess tax paid under Section 46A(1) the assessee has filed the revisions for all these three years. So far as the revision for 1998-99 is concerned, the rate of tax payable after withdrawal of concessional rate was 10%, but the assessee continued to show collection of tax in the invoices at 6% and remitted the same along with monthly returns. However, along with annual return the assessee paid full amount of tax and differential tax also and claimed deduction of the entire tax paid while determining taxable turnover under Rule 9(l) of the KGST Rules. However, the Assessing Officer rejected the claim of deduction of tax in excess of 6% as according to him, bills showed separate collection of tax only at 6% and balance tax is uncollected tax paid by the petitioner from the margin. The assessment was confirmed in first

appeal and again in second appeal by the order of the Tribunal. It is against confirmation of disallowance of deduction of excess rate of tax of 4% paid by the petitioner over the tax collection of 6%, revision for 1998-99 is filed.

3. In support of challenge against the order of the Tribunal confirming forfeiture of excess tax collected by the petitioner for the first three years, counsel for the assessee relied on decision of the Supreme Court in MAFATLAL INDUSTRIES Case reported in (1999) 5 SCC 536 and contended that the tax is in fact not collected by the petitioner as under the price equalisation scheme bifurcation of tax shown in the invoice in terms of which return is filed should not be strictly treated as collection of tax. According to the petitioner, the scheme of Section 46A(1) i.e. forfeiture of excess collection of tax, is to prevent undue enrichment of dealers who have passed on tax liability to the customers. In the first place, we are unable to accept this proposition because the scheme of Section 46A(1) is not only to prevent unjust enrichment of the dealer collecting tax over the tax due and payable by him, but to ensure that the affected customer is eligible to claim refund in terms of Rule 31(d) of the KGST Rules by filing application in Form 40 prescribed thereunder. In other words, a customer from whom excess tax is collected after forfeiture of the same by the officer under Section 46A(1) of the Act is entitled to claim refund of such excess collection. This scheme of the Act is not affected irrespective of the marketing strategies of manufacturing or

distributing concerns. Even though under the price equalisation scheme tax is worked back from the equalised price and the same is varying in several states, we do not think the same will justify overlooking of mandatory statutory provisions which provide for forfeiture of excess collection. It is conceded that the tax at the higher rate of 8% is separately billed to the customers and petitioner got the benefit of deduction of tax under Rule 9(l) of the KGST Rules in the determination of taxable turnover. However, it is seen that as against 8% separately collected in the bills, the Assessing Officer granted reduction of only 5% and treated the balance excess collection also as part of taxable turnover. Even though the issue is not specifically raised by the petitioner, we do not think we should approve the part disallowance of tax collection as Rule(l) provides for deduction of tax separately collected irrespective of whether such tax is the actual rate payable or not. In other words, petitioner was entitled to deduction of tax separately collected in the determination of taxable turnover and the officer is perfectly justified in forfeiting excess collection but after granting deduction of such excess collection along with the actual rate of tax payable while determining taxable turnover. Therefore, levy of tax on excess collection of sales tax is illegal. In the circumstances and in view of the admitted position that tax at 8% is recovered in the bills from the customers, we uphold the forfeiture of 3% of tax i.e. the excess tax collected for the assessment years 1992-93 to 1994-95. However, there will be

direction to the Assessing Officer to revise the assessment by granting deduction of entire tax collected i.e. 8% tax collected, in the determination of taxable turnover and levy tax only on the balance taxable turnover. In other words, the Officer should recompute the tax liability by excluding tax on 3% of excess collection of tax.

4. The only question raised for the year 1998-99 is whether the petitioner is entitled to deduction of tax payable at the actual rate i.e.10% as against 6% collected by the petitioner. It is admitted that tax collected, that again, by reworking tax from equalised price is only at 6% on the assumption that benefit of notification was still available. However, as notification was already withdrawn, the actual rate of tax payable and assessed was 10%. What Rule 9(l) provides is for deduction of tax actually collected in the bill and not the tax payable by the dealer. In the circumstances, the order of the Tribunal upholding the disallowance of claim of deduction of tax in excess of the actual tax collected under Rule 9(l) of the KGST Rules is upheld. Even though counsel for the petitioner relied on decision of the Supreme Court in CENTRAL WINES CASE reported in (1987) 65 STC 48 and the decision of this court in CANARA WORKSHOP'S case (1994) 95 STC 507 and contended that the Legislature did not intend to levy tax on tax, we are unable to accept the argument because whatever is legislative intention is translated into specific Rules by the Government under delegated power and we

have already held that compliance of Rule 9(l) is mandatory for the purpose of granting deduction of tax in the determination of taxable turnover. All the Sales Tax Revision Cases are therefore dismissed, but with direction to the Assessing Officer to modify the assessments for the years 1992-93 to 1994-95 as above.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

S.T.R.V. Nos.187,188 & 245
of 2003 & 423 of 2005

JUDGMENT

Dated 23.8.2006